CITY HALL COUNCIL CHAMBERS
SANTA MARIA, CALIFORNIA
REGULAR MEETING

JANUARY 18, 2011

CALL TO ORDER:
Mayor Lavagnino called the Regular Meeting of the City Council to order at 6:00 p.m.

ROLL CALL:
MEMBERS PRESENT
Councilmembers Boysen, Cordero, Orach, Patino, and Mayor Lavagnino.

PUBLIC COMMENT:
There were none at this time.

RECESS:
Mayor Lavagnino recessed to a Closed Session at 6:02 p.m. for Conference with Labor Negotiators pursuant to Government Code Section 54957.6, Agency Representative – Assistant City Manager; Employee Organizations - Santa Maria Police Officers Assoc. (SMPOA); Service Employees International Union (SEIU) Local 620; Fire Fighters Local 2020; Public Safety Managers; and Non-Represented Management and Confidential Employees.

RECONVENE:
Mayor Lavagnino reconvened the Regular City Council meeting at 6:30 p.m.

CLOSED SESSION REPORT:
City Attorney Trujillo reported on the action taken in the Closed Session for Conference with Labor Negotiators pursuant to Government Code Section 54957.6, Employee Organizations - Santa Maria Police Officers Assoc. (SMPOA); Service Employees International Union (SEIU) Local 620; Fire Fighters Local 2020; Public Safety Managers; and Non-Represented Management and Confidential Employees – A Closed Session was held and a status report was given regarding the state of negotiations with the various labor groups. In regards to Fire Fighters Local 2020, direction to staff was given.

INVOCATION:
Pastor Jim Schettler of First Baptist Church gave the invocation.

PLEDGE OF ALLEGIANCE TO THE FLAG:
Councilmember Patino led the Pledge of Allegiance.

ROLL CALL:
MEMBERS PRESENT
Councilmembers Boysen, Cordero, Orach, Patino, and Mayor Lavagnino were again present.

STAFF MEMBERS PRESENT
City Manager Ness, City Attorney Trujillo, Assistant City Manager Haydon, Fire Chief Jones, Director of Public Works/City Engineer Whitehead, Utilities Engineer Kahn, Police Chief Macagni, Director of Community Development Appel, Director of Recreation and Parks Posada, Director of Administrative Services Visé; and Chief Deputy City Clerk Perez.

VOLUNTEER OF THE MONTH:
Councilmember Orach presented a gift to Jewel Ryan, the Recreation and Parks Volunteer of the Month for January 2011 for her dedication and commitment over the *past 15 years as the coordinator of the Senior Book Exchange held twice each month at* the Elwin Mussell Senior Center.

PROCLAMATION - PREVENT LOAN MODIFICATION FRAUD MONTH
Councilmember Boysen read a proclamation declaring the month of February 2011 as "Scam Alert – Prevent Loan Modification Fraud Month" in the City of Santa Maria and encouraging the residents of Santa Maria to report loan fraud activity by contacting the office of the District Attorney of the County of Santa Barbara. The proclamation was accepted by Dave Krier of the Community Action Commission and Gabriela Casiano of the Cabrillo Economic Development Corporation.

PUBLIC COMMENT
Art Foster introduced his 2011 racing team members from Santa Maria High School. He said the students were well trained in fire fighting and maintained a 3.5 grade point average. The team would be representing the Santa Maria Valley starting in March. On January 29th, they would be having a fundraising barbecue and car show at Santa Maria High School to support the March event. Each of the students introduced themselves and told what their team responsibilities were.

Chris Nartatez, Santa Maria Police Officers Association, requested that Item #9 – A resolution resolving the meet and confer impasse with the POA - be moved to the front of the agenda so the Police Officers who had to work graveyard could rest before getting ready for work.

City Manager Ness requested that if the Council chose to move Agenda Item #9 forward, that Agenda Item #8 be moved forward as well and taken before #9.

Harry Johnson spoke about the problems in his neighborhood.

Gwen Wood welcomed Councilmember Boysen. She read a letter to the editor that was in the newspaper last June comparing the cities of San Luis Obispo and Santa Maria and spoke about crime in the City.

Ernest Armenta agreed there were some areas in Santa Maria that had a lot of crime, but he was proud of Santa Maria. He talked about the proposed solid waste rate increases and asked that each property owner be allowed to vote on the rate increase and not limit it to only one vote per parcel.

Mayor Lavagnino announced that after the Consent Calendar he would move Items #8 and #9 forward on the agenda.

CONSENT CALENDAR
Councilmember Boysen requested Item 3D be pulled for comment.

Item 3D – Warrants
Councilmember Boysen commented that Warrants 163561 to 163563 were not identified in the voucher list.

Consent Calendar Items 3A through 3E were approved on motion by Councilmember Orach, seconded by Councilmember Patino, and carried on the following vote:

AYES: Councilmembers Boysen, Cordero, Orach, Patino, and Mayor Lavagnino
NOES: None
ABSENT: None
ABSTAIN: None

A. ORDINANCES
The reading in full of all ordinances and resolutions was waived. Ordinances on the Consent Calendar were adopted by the same vote cast at the first reading unless City Council indicated otherwise.

B. MINUTES
The Minutes of the Regular City Council Meeting of January 4, 2011, were approved as submitted.

C. RELEASE OF BOND

The City Council accepted as complete the public improvements associated with Hunter's Landing at Stowell Road and State Highway 101, and released a Faithful Performance Bond in the reduced amount of $50,000, with the order that the Contractor, Labor and Material Bond be retained until July 2011.

D. WARRANTS

Warrant Nos. 163561 to 163798 totaling $1,946,031.03 were ordered ratified subject to having been certified as being in conformity with the budget and having been approved for payment by the Director of Administrative Services. Warrant No. 163301 was cancelled.

E. PAYROLL

Payment of payroll was ordered ratified subject to having been certified by the proper Department Heads, as shown on records on file in the Department of Administrative Services and having been approved for payment by the Director of Administrative Services.

RESOLUTIONS APPROVING AN AMENDMENT TO AND AN EXTENSION OF THE CURRENT MEMORANDUM OF UNDERSTANDING WITH THE SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU) AND WAGE AND BENEFIT PACKAGES FOR THE NON-REPRESENTED MANAGEMENT AND CONFIDENTIAL EMPLOYEES AND THE PUBLIC SAFETY MANAGERS.

Assistant City Manager Haydon gave the staff report. As Council is aware, over the last two years the National, State and local economies have been hit with a severe recession. Since virtually all City major revenue sources in the General Fund are economy driven, when the economy is down, so are City revenues. At the beginning of this year, the City entered 2010-11 with an $8 million budget deficit and balanced the budget with a combination of one-time funding, the elimination of full-time positions, and anticipated concessions from all employee groups. Since that time, revenues have continued to decrease and operational expenses (mainly pension costs) have increased. Consequently, with this somber financial information and the fact that pension-related costs are skyrocketing, City staff sat down over the last several months with each of the represented bargaining groups to garner economic concessions at the negotiating table for calendar year 2011. During these discussions, the State and local economy was discussed and the negative fiscal impact the recent recession continues to have on City finances. All employee groups were informed that the City was in a concession bargaining position for 2011 and was seeking not only a continuation of similar compensation concessions agreed to in 2010, but also seeking a lower level two-tier retirement plan. Negotiations on an MOU extension with SEIU as well as discussions with the non-represented management & confidential employees and public safety managers have concluded. The negotiated contract extension and wage and benefit packages call for compensation concessions from all general and management employees as well as the introduction of a new lower level two-tier retirement plan for non-safety employees. As in calendar year 2010, the Mandatory Time Off (MTO) Program will continue with thirteen days throughout the 2011 calendar year that City operations will be closed to the public and employees sent home without pay (mission critical operations such as public safety services excluded).

This year's negotiated contract extension also calls for the implementation of a new lower level two-tier retirement plan effective July 2011. Currently, all non-safety employees participate in the CalPERS 2.7 percent at 55 single highest year retirement plan, with the City paying the entire eight percent members' contribution. During this recent round of negotiations, both the City and SEIU have agreed to implement a new lower level two-tier retirement plan based on the 2 percent at 55 three year average retirement formula, with the employees (and not the City) paying the entire members contribution. However, because of CalPERS requirements, all full-time non-safety employees are categorized in one group for retirement purposes regardless of their union representation. Consequently, Council action to approve a two-tier retirement system for SEIU and the non-represented management and confidential employees will automatically be applicable to those non-sworn employees in the Santa Maria Police Officers' Association as well. On Wednesday evening, January 5, 2011, SEIU negotiators presented contract extension language to their membership and the language was ratified.

With respect to the Non-Represented Management and Confidential Employees and Public Safety Managers, over the last month, the City Manager and Assistant City Manager met with these groups of employees and entered into informal discussions to assemble a wage and benefit package consisting of five percent concessions for Council's consideration. The package before Council is consistent with Council parameters and includes the thirteen day MTO program along with the introduction of a lower level two-tier retirement plan.

Bruce Corsaw, Executive Director of SEIU Local 620, stated this was not easy for them. In addition to the four to five percent salary cut and two-tier retirement plan, they were making sacrifices in health care. Health care costs went up quite a bit. Even with the token increase they got, it was going to be quite difficult for the membership. However, the membership did ratify the MOU. He is counting on a commitment made at the negotiations table that all employees of the City would be treated equally and fairly, and he hoped the Council would do the same. He thanked the City for working with them and for their tolerance during the negotiation process. He asked the Council to send a letter to the employees thanking them for their cooperation.

Mayor Lavagnino requested a letter be prepared for his signature.

Councilmember Patino thanked Mr. Corsaw and the members of SEIU for their cooperation.

Resolution No. 2011-09 was adopted approving amendments to and extension of the MOU with SEIU, Local 620, on motion by Councilmember Patino, seconded by Councilmember Orach, and carried on the following vote:

AYES: Councilmembers Boysen, Cordero, Orach, Patino, and Mayor Lavagnino
NOES: None
ABSENT: None
ABSTAIN: None

Resolution No. 2011-09 adopted. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA MARIA, CALIFORNIA, APPROVING AMENDMENTS TO AND AN EXTENSION OF THE MEMORANDUM OF UNDERSTANDING WITH THE SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU) LOCAL 620.

Resolution No. 2011-10 approving a wage and benefit package for non-represented management and confidential employees was adopted on motion by Councilmember Patino, seconded by Councilmember Orach, and carried on the following vote:

AYES: Councilmembers Boysen, Cordero, Orach, Patino, and Mayor Lavagnino
NOES: None
ABSENT: None
ABSTAIN: None

Resolution No. 2011-10 adopted. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA MARIA, CALIFORNIA, APPROVING A WAGE AND BENEFIT PACKAGE FOR THE NON-REPRESENTED FULL-TIME MANAGEMENT & CONFIDENTIAL EMPLOYEES.

Resolution No. 2011-11 approving a wage and benefit package for Public Safety Managers was adopted on motion by Councilmember Patino, seconded by Councilmember Orach, and carried on the following vote:

AYES: Councilmembers Boysen, Cordero, Orach, Patino, and Mayor Lavagnino
NOES: None
ABSENT: None
ABSTAIN: None

Resolution No. 2011-11 adopted. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA MARIA, CALIFORNIA, APPROVING A WAGE AND BENEFIT PACKAGE FOR THE PUBLIC SAFETY MANAGERS.

A RESOLUTION RESOLVING THE CALENDAR YEAR 2011 MEET AND CONFER IMPASSE EXISTING BETWEEN REPRESENTATIVES OF THE CITY AND THE SANTA MARIA POLICE OFFICERS ASSOCIATION (SMPOA), A RECOGNIZED EMPLOYEE ORGANIZATION.

Mayor Lavagnino announced this matter has been properly agenized before the City Council pursuant to City Resolution No. 2002-29, the Employer-Employee Resolution of the City. Section 16 of the Resolution provides that where the possibility of settlement of the meet and confer disputes by direct discussion of the representatives of the City and the POA has been exhausted, and where, as here, the city representatives felt that the differences between the parties were so great that mediation would be fruitless, the City Council shall make a final determination on the merits of the disputed issues. The Council, the POA, and the public have been provided access to the Council agenda report prepared by Assistant City Manager Haydon, and the Council has read it. In brief, the agenda report and the accompanying resolution, which are before the Council for its determination, displays that a number of issues have been tentatively agreed to by City and POA representatives, and the Council appreciates the efforts that resulted in these tentative agreements. Therefore, the Council is tasked tonight with resolving the few, yet important, disputes that remain between City and POA representatives. Those disputes regard: 1) implementation of a less costly two-tier retirement system which would only affect future hires of the City; 2) elimination of what is called donning and doffing compensation – pay to officers to compensate them for time spent putting on and taking off their protective equipment; and 3) Section 7-12 of the MOU, inhibiting the ability of the City to make adjustments to terms and conditions of employment necessitated by changes in funding and operational needs which come to the attention of management during the year. He asked Assistant City Manager Haydon to make a brief statement of the disputed issues.

Assistant City Manager Haydon gave the staff report. Pursuant to Government Code Sections 3505 and 3505.4, the City Council's designated representatives are to meet and confer in good faith with recognized employee organizations over matters regarding wages, hours, and other terms and conditions of employment. If, after meeting and conferring in good faith, a deadlock in discussions has occurred and an impasse has been reached between the City and the recognized employee organization (in this case the SMPOA), and the impasse procedures have been exhausted, the City Council may implement its last, best, and final proposal. Over the last several months, the City has been meeting with representatives of the SMPOA. Both sides met in good faith over this period of time in an effort to come to an agreement on a successor Memorandum of Understanding (MOU). Unfortunately, there were three outstanding items that neither party was able to resolve: transitioning to a lower level two-tier retirement plan for new hires, elimination of the donning and doffing compensation, and modification to MOU Section 7-12 Prior and Existing Conditions. Being in a deadlock in discussions, an impasse was declared and a subsequent Resolution-required impasse meeting was held on January 6, 2011 in an attempt to resolve the aforementioned three outstanding issues. At the conclusion of the impasse meeting, these issues were still outstanding; and, now, pursuant to Resolution 2002-29, the City Council is to make the final determination on the merits of the disputed issues.

Like SEIU and other bargaining groups, staff sat down over the last several months with each of the represented bargaining groups to garner economic concessions and discussed the fact that CalPERS pension-related costs are continuing to skyrocket and pension rates are dramatically increasing. PERS rates have increased almost four percent over the last two years. In fact, the anticipated City cost for CalPERS-related expenses for a sworn officer is estimated to be almost 41 percent in 2 years.

Regarding the two-tier retirement system, the Council earlier tonight instituted a two-tier lower level retirement plan based on the 2% at 55 three year average with the newly hired employees paying their entire members' contribution. This lower level plan will directly affect those non-sworn employees represented by the SMPOA since CalPERS requires that all non-public safety employees be categorized in one employee group for retirement purposes. The other two outstanding items are the elimination of the donning and doffing benefit and the modification of Section 7-12 so it is consistent with other bargaining groups and to avoid further costly litigation brought on by the POA.

Mayor Lavagnino called for public comment.

Joann Marmolejo, SBCAN, stated in reading the resolution, most of it dealt with financial costs to the City. While no one wanted to see workers' wages reduced, it was understandable in this economy. The amendments to Section 7-12 appeared to be taking away language that had been in their MOUs since 1976. The City's Police Officers already worked at a lower ratio than other cities. It seemed like a good time to support the officers by leaving the language in Section 7-12 the way it was in their current agreement.

Terri Zuniga said the men and women of the Santa Maria Police Department got up every day and put on their uniforms to protect the City. She had first-hand knowledge of their dedication to their jobs, to the protection of the community, their efforts on behalf of victims, and their heart-felt desire to make the community a safer place for everyone. They deserved not only the community's gratitude and respect, but also its support. The POA understood that these were difficult times. They made concessions and sacrifices last year and this year. They understood the difficult economic environment and its impact on jobs and the way the City needed to conduct its business. However, they expressed their concerns regarding a two-tier retirement system and its possible negative impact on recruiting new officers. It was important that the City had a benefit package that would attract the best and brightest to the community. She felt the language changes to the Prior and Existing Conditions made no sense since it had no fiscal impact to the budget. She asked that the Council consider leaving the existing language in Section 7-12.

Ernest Armenta asked the audience at home to watch the comments of the Councilmembers. This was all about pay, and the Police Officers felt they were being short-changed. This was bargaining to see who was going to vote for and take care of the Police Officers' Association. It was the taxpayer who had to cover the costs. Every employee was taking a cut. The elected officials should be taking a 25 percent to 50 percent cut.

Chris Nartatez, President of the SMPOA, said POA went into negotiations last year and gave up some concessions. The first meeting with the City last year, 45 minutes into the negotiations, they wanted to serve the POA with the impasse letter. They got beyond that and came up with an agreement. This year, it only took two meetings for them to serve the POA with impasse papers. The POA realizes that the City is having tough times and struggling with finances. The POA wanted to continue the concessions from last year and didn't have a problem with that; but the City wanted to take more. There was a meeting prior to this meeting with the POA. The POA has a new Board of Directors. Does the POA need to improve relations with the City? Absolutely. Do they need to improve relationships with City staff? Absolutely. Do they need to improve communications with Police Administration? Absolutely. When the POA had the last meeting with Mr. Ness and Mr. Haydon, he put his hand out and said they need to have better communications and move forward. He was speaking for all the Police Officers. The POA members are here to serve the City and to protect. He had a meeting with Chief Macagni and the two Commanders as the new POA President. They started having some good communications. He wanted that to continue. That was what he was here to do. The vision he had for the POA was to learn to communicate better and be up front with each other. Donning and doffing was a benefit that was negotiated to benefit the Police Officers. And now they want to take that benefit away from them. Last year the City wanted concessions, and now they want more concessions, more money. Donning and doffing comes out to about 2.5 percent. They asked the City to change that benefit to another added benefit like additional Floating Holiday hours. It would mean about 52 hours added to Floating Holidays. At one time they had 120 hours of Floating Holidays, now they have 36 hours. Changing the donning and doffing benefit to Floating Holidays would bring it up to 88 hours. Maybe they could negotiate that. The Council did not have to vote to impose tonight. He requested that the Council direct staff to bring them back to the table so they can renegotiate. They were not unreasonable. They were people that want to be fair, but they feel like it is not fair. Currently, the POA is at 3 percent at 50 retirement plan. Management wants to change that to 3 percent at 55 and have the new employees beginning July 1st pay their portion of 9 percent. That was difficult to swallow. They were going to be sitting in briefings, walking the alleys, and looking for criminals with one Officer getting paid less because

he had to pay his portion of 9 percent. He understood that the State was having financial problems which trickled down to the cities and counties. Bring them back to the table and maybe new employees could pay half of their member contribution instead of the full 9 percent. They were looking for qualified Police Officers; and if a Police Officer was looking for a job, he would be looking at the benefit package. The majority of the agencies still have the 3 percent at 50 plan. Let's not be the first on the block. Let's not give it up yet until a certain percentage of cities go to 3 percent at 55. They were not unreasonable. They were not saying they would stay at 3 percent at 50. If it needed to change, they were willing to do that. Please take the POA back to the table. The maintenance of benefit clause had been in place since 1976. There were not a lot of problems with it until recently. Mr. Haydon mentioned that it was a financial impact because of the shift change lawsuit. That was the only thing he could remember that was ever taken to court or cost the City any finances. They were given inaccurate information about the Section 7-12 clause at the bargaining table. The POA was told that the Fire Department gave up their version of 7-12 freely. He talked to union representatives from the Fire Department. They said they gave it up but received substantial benefits for it. It was a give and take. He asked the City Council to not impose the contract and let them go back to the table. He believed they could positively come to some type of agreement. He was putting his hand out to the Mayor and City Council. He appreciated the Council moving the agenda item forward. They were the men and women of the Santa Maria Police Department, and they were here to protect and serve the City.

Assistant City Manager Haydon responded to comments from the public. With regard to what was stated by Ms. Marmolejo, the action taken by the City on modification of Section 7-12 is a cost issue, it is a cost avoidance factor – to avoid costly litigation brought on by the SMPOA against the City. The City was sued by the POA regarding Section 7-12, and it cost the City over $50,000 in litigation expenses. They continue to threaten the City with litigation regarding Section 7-12 to restrict management's ability to change policies and procedures. With regard to Ms. Zuniga's comments, the City does not want an adversarial relationship with the SMPOA or any employees. The City values its employees, and the working relationships with the employee groups. Employees were the City's finest assets, and staff tries not to engage in adversarial relationships. Staff is not questioning their dedication or service to the community. As for recruitments, the City does not anticipate having a recruitment issue nor has there been a recruitment issue. With regard to Mr. Armenta's comments, the City Council and the boards and commissions have taken a five percent concession in their compensation.

With regard to Sergeant Nartatez's comments, management staff met with the POA to resolve the issues – that's what the negotiation table is for – but were not able to do so. The City did not give them our impasse proposal at the first meeting as he claims, the City gave them an initial proposal at the first meeting, gave them a second proposal and third proposal at the second meeting. Then at the third meeting, when there was an indication that there was a deadlock, management gave them its final proposal and declared an impasse.

The City currently spends over $7.3 million in pension-related costs in the General Fund – that represents approximately 14 percent of all General Fund operating expenses. And since the negotiation process has started, CalPERS has indicated that the City's General Fund pension-related costs will be escalating ever more in 2011-12 by an additional $1.5 million over the current year's estimates. In the Police Department alone, CalPERS pension costs will increase over $600,000 in July 2011 – by comparison, that's equivalent to five Police Officer positions. These projected costs are alarming, especially given the fact that revenues are down; and the State is facing a multi-billion dollar budget deficit and is looking at eliminating the Redevelopment Agency and transitioning services down to local governments without providing funding for these new services. Consequently, if left unchecked, these costs will result in diminishing public safety services within the community. As such, pension reform is needed right now. Currently all safety-related City employees participate in the CalPERS 3 percent at 50 single highest year retirement plan with the City paying the entire 9 percent members' contribution. The City has proposed pension reform by instituting for new hires only, a two-tier lower benefit retirement plan – the 3 percent at 55 three year average retirement formula, with newly hired employees paying the entire

member contribution. For a typical Police Officer with 30 years of service retiring at age 50 with a single highest year salary of $76,920, that Officer would be eligible to receive 90 percent of his/her income which would equate to a little over $69,000 annually. This amount would then be adjusted by an annual 2 percent inflation factor a year after their first year of retirement. The estimated value of this retirement, over the life of the retiree, would be a minimum of $2.1 million.

Assistant City Manager Haydon explained how the retirement formula worked and the difference between the current retirement formula and the proposed retirement formula for new hires. Staff did an analysis of the two-tier retirement system with the other agencies that the City compares with as well as how much the employees pay towards retirement. Of the agencies surveyed, the California Highway Patrol has transitioned to a two-tier retirement plan for all new hires at the 2 percent at 55 retirement formula, and the City of Ventura had an item on their agenda tonight to go to 3 percent at 55 with the employees picking up 3.4 percent of the cost of retirement. Santa Maria was the only city besides the City of Oxnard in the surveyed agencies where the employees do not pay anything toward retirement. The cities of Campbell, Carlsbad, Folsom, Visalia, Seaside, and Union City either have gone or will be going to a two-tier retirement system.

The proposal before the Council is to transition all new employees hired after July 1, 2011, to a lower level two-tier retirement system and new employees (and not existing employees) pay the 9 percent member's contribution. Previously, the Council passed Resolution No. 2011-10 which requires all new full-time and part-time non-safety employees hired after July 1, 2011, to pay their entire members' contribution. Furthermore, the City appears to have a tentative agreement with the Fire Fighter's Association whereby they have agreed to have all new employees hired after July 2011 pay 9 percent of the pension costs.

With regard to the donning and doffing benefit, no other agency surveyed affords this benefit to its employees other than the City of San Luis Obispo. In 2009, the City and POA agreed to implement the benefit based solely on concerns about the unresolved state of the law as to compensating sworn employees for donning and doffing their protective gear. This matter had now been clarified by the courts, and there were no mandates by Police administration for the officers to don and doff their equipment at the Police Department. Because of the severe financial condition the City is in, staff does not see any justification to continue to pay for this benefit. The estimated savings associated with eliminating this benefit is anticipated to be a minimum of $180,000 annually, well in excess of the cost of one Police Officer. This benefit was never intended to exist unless the then-pending court cases required it. This benefit was not charged to their package in 2009 and was in addition to any salary enhancement afforded to the POA. Accordingly, faced with the multi-million dollar budget deficit that needs to be addressed in the next five months, now is not the time to afford an enriched benefit to employees when the sole basis for instituting the benefit no longer exists.

Regarding modification to Section 7-12 in the SMPOA MOU, it is considered a Maintenance of Benefit clause which, as written, unduly restricts management's rights and abilities to effectively administer and implement policies and programs within the Police Department. It is critical that the Council appreciate the burden that present Section 7-12 language imposes upon management, and the reasonable modification being proposed by the City. Present Section 7-12 language prohibits management from changing terms and conditions of employment including operations and procedures during the term of the agreement that are outside the agreement unless the SMPOA agrees to those changes. The proposed language modification to Section 7-12 has absolutely no impact on maintenance of those terms and conditions of employment that are specifically set forth in the MOU. The purpose of the City proposed modification to the existing Section 7-12 language is to assure that terms and conditions of employment not specifically referenced in the MOU, can be modified after completing the meet and confer process with SMPOA representatives and exhausting reasonable efforts to reach an agreement. There have been instances in the past in response to Council and/or City management or Police administration directions, when management tried to implement policies and procedures or new programs only to be barred from doing so by the POA because of this provision. The most recent instance was the shift bidding lawsuit that was initiated by the POA, a lawsuit that not only cost taxpayers almost

$50,000 in expenses but also consumed a considerable amount of staff time. While the City prevailed in the litigation, the court did rule and admonish the City to correct the language in the MOU. The language modification being sought is consistent with language in the SEIU MOU and the Firefighters' Association MOU. Furthermore, the City is attempting to avoid further costly litigation brought on by the POA.

Councilmember Cordero asked if going to the average of the last three years rather than the single highest year was consistent with the other bargaining units.

Assistant Manager Haydon stated yes, it was. In addition, staff was recently informed that the Firefighters' Association, Local 2020, agreed to a two-tier retirement plan with 3% at 55 formula for new employees and the new employees paying the members contribution.

Councilmember Cordero asked how many times the issue of Section 7-12 went to court.

Assistant City Manager Haydon replied just once recently. However, management has had a number of discussions regarding various issues; and every time management broaches an issue the POA did not care for, they threaten litigation.

Councilmember Patino stated she did not remember the donning and doffing issue being negotiated and asked if any other bargaining unit had similar apparatus that they had to put on.

Assistant City Manager Haydon stated it was negotiated in March 2009 after protracted negotiations. It was an act of good will on the part of the Council at that time, and the City thought the Court would require it. There were other departments that required employees to wear protective gear but not to the extent of sworn officers, and they donned it during their shift.

Councilmember Patino stated the City regularly received grant funding and asked if Section 7-12 meant that the City would not have the right to move officers to other assignments to utilize the grant funds.

Assistant City Manager Haydon explained that it could.

Councilmember Boysen asked when all of the changes would go into effect.

Assistant City Manager Haydon stated the authorizing resolution specified the changes would take place beginning the next payroll period if they were payroll related, otherwise they would take effect immediately upon adoption of the Resolution. The retirement plan would not go into affect until July after an amendment to the PERS contract was approved. Donning and doffing compensation would go into effect at the beginning of the next payroll period.

Councilmember Boysen asked if the California Highway Patrol were at the three-year average or single-highest year retirement formula and if it was the proposal in Ventura.

Assistant City Manager Haydon stated according to the agenda report for Ventura, it would be 3 percent at 55, single highest year, and he did not know about the CHP.

Councilmember Boysen asked how much the entire Police Department would have to pay for retirement in order to make the City whole and not charge new employees the full 9 percent.

Assistant City Manager Haydon stated that would be hard to estimate. It would depend on how many employees retired or left City service and were replaced by new employees at the lower retirement formula. There would be a savings with the 9 percent and a slight saving in contributions for the lower retirement formula. If there were 10 employees retiring, it could be a savings of somewhere around $75,000 to $80,000. A one percent contribution by sworn employees would be somewhere around that amount.

Councilmember Boysen posed the question if the entire POA collectively agreed to pay 1 percent across the board, it could make up for new employees paying the 9 percent? He said Sergeant Nartatez's comment that it would be unfair to have Officers working side-by-side out on the street with some of them receiving reduced benefits, hit home to him.

Assistant City Manager Haydon stated the impact of that would be difficult to gauge. That could be negotiated with the POA a year from now when the City knew the actual costs.

Councilmember Boysen stated he supposed that there were some specific things the POA would like to see in Section 7-12 that might be outside the MOU and asked if that had been discussed.

Assistant City Manager Haydon stated that has been discussed with the POA this year and in years past. They said if the entire table of contents of the Policies and Procedures Manual was added as an appendix to Section 7-12, they would agree with it. He felt their response was unreasonable.

Councilmember Orach stated he recalled that staff tried to start negotiations back in August, but were not able to start negotiations until November because of the POA.

Assistant City Manager Haydon stated he contacted the POA in September requesting to commence the negotiations process. Management sat down with the President and Vice President in early November. Part of the problem was that the POA has an attorney at the table and so does the City, and scheduling conflicts made it difficult to meet sooner.

Councilmember Cordero asked about the DUI checkpoints the City receives grant funding for and whether Section 7-12 had been used regarding deployment of those checkpoints.

Assistant City Manager Haydon stated if the City received a grant and an officer had to be moved to another assignment, they could use Section 7-12 to refuse the assignment.

Councilmember Patino asked how the City could go back to the table when the City had issued its last best and final offer.

Assistant City Manager Haydon stated reopening negotiations was not an option as the City and POA had exhausted their discussions.

City Manager Ness stated there were three contested items. One of the comments from the POA President was that if the City went to the proposed two-tier retirement system, the POA would end up with a series of "haves" and "have nots." As the Assistant City Manager demonstrated, most of the cities surveyed have their employees pay at least a portion of the pension already. Secondly, as far as the donning and doffing, it was given as an olive branch and was not charged to the package. The POA President said the City gave them this benefit and now wanted to take it away. The City of San Luis Obispo is the only other City that provides donning and doffing compensation, and they were the agency where the lawsuit initiated. It was the 9th Circuit Court of Appeal that made the decision that donning and doffing was not compensable if the Police administration did not require the Officers to don and doff their equipment at the station. The President of the POA was given inaccurate information regarding the Fire Department receiving substantial benefits for giving up their Section 7-12 language. The year in which the Fire Department gave up their equivalent of the Section 7-12 language, there wasn't anything provided to them in exchange for giving up that benefit. If you looked at the year in which the Fire Department gave up that benefit, the POA probably got the same or a greater benefit package. There was an impasse meeting with the POA several weeks ago. Not once did the POA implore management to continue to talk and stay at the table. We talked about impasse and explained the procedures. Finally, the City was doing this because of finances. The City was going broke and could not afford to continue to provide the same level of benefits. The Police and Fire Departments made up 55 percent of the entire General Fund Budget. If the direction of the Council was to not cut Police or Fire, the City would have to make up the

$2.6 million deficit out of the remaining 45 percent of the General Fund. With no additional revenue sources, it could not be done. The City had cut past the skin and we're now into the bone. If the City had to make more cuts, it would have to be in service programs and whole programs. When management comes back in June with budget recommendations, there will be layoffs and cuts in major services. There is no choice. This is a minor baby step to where the City is heading.

Mayor Lavagnino stated he would call for individual motions on 1) the tentatively agreed upon issues; 2) the proposal to implement a two-tier retirement plan for new hires only, which would provide a 3 percent at 55, three year average retirement formula, with the newly hired employees paying the full cost of their statutory member contribution to PERS; 3) the proposal to eliminate the donning and doffing compensation; and 4) modification to Section 7-12 of the MOU.

1) Tentatively agreed upon issues of Resolution No. 2011-12:

Section 1 of Resolution No. 2011-12 was approved on motion by Councilmember Cordero, seconded by Councilmember Patino, and carried on the following vote:

AYES: Councilmembers Boysen, Cordero, Orach, Patino, and Mayor Lavagnino
NOES: None
ABSENT: None
ABSTAIN: None

2) Introduction of a Two-Tier retirement formula:

Section 2 of Resolution No. 2011-12 was approved on motion by Councilmember Patino, seconded by Councilmember Orach, and carried on the following vote:

AYES: Councilmembers Orach, Patino, and Mayor Lavagnino
NOES: Councilmembers Boysen and Cordero
ABSENT: None
ABSTAIN: None

3) Elimination of the Donning and Doffing benefit:

Section 3 of Resolution No. 2011-12 was approved on motion by Councilmember Orach, seconded by Councilmember Patino, and carried on the following vote:

AYES: Councilmembers Boysen, Cordero, Orach, Patino, and Mayor Lavagnino
NOES: None
ABSENT: None
ABSTAIN: None

4) Modifications to Section 7-12 of the MOU:

Section 4 of Resolution No. 2011-12 was approved on motion by Councilmember Patino, seconded by Councilmember Orach, and carried on the following vote:

AYES: Councilmembers Orach, Patino, and Mayor Lavagnino
NOES: Councilmembers Boysen and Cordero
ABSENT: None
ABSTAIN: None

Resolution No. 2011-12 adopted. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA MARIA RESOLVING THE CALENDAR YEAR 2011 MEET AND CONFER IMPASSE THAT EXISTS BETWEEN REPRESENTATIVES OF THE CITY AND THE SANTA MARIA POLICE OFFICERS ASSOCIATION, A RECOGNIZED EMPLOYEE ORGANIZATION.

ANNUAL APPOINTMENTS TO COMMITTEES AND BOARDS

Chief Deputy City Clerk Perez gave the staff report. The Council is being asked to make annual appointments to various City Committees and Boards. Appointments are needed on the All-America City Committee, the Code Compliance Board, the Planning

Commission, the Recreation and Parks Commission, and the Santa Maria Community Television Board of Directors, and direct staff to readvertise one Youth/Education vacancy on the All-America City Committee and one vacancy on the Landmark Committee as insufficient applications were received.

All-America City Committee
There are four vacancies on the All-America City Committee. The applicants must represent two segments of the community: At-Large and Youth/Education. Nominations will be made by Councilmembers Boysen, Cordero, Orach, and Patino. Applications were received from:

Esther Acosta, incumbent	At-Large
Timothy Larson	At-Large
August (Bud) Narachi	At-Large

The following nominations were made:

Esther Acosta was nominated by Councilmember Cordero
August (Bud) Narachi was nominated by Councilmember Patino

Councilmembers Boysen requested that his nomination be postponed and that staff readvertise the remaining At-Large vacancy. Councilmember Orach requested staff readvertise the Youth/Education vacancy as well.

On motion by Councilmember Cordero, seconded by Councilmember Patino, and carried unanimously, the appointments were confirmed and staff was directed to readvertise.

Code Compliance Board
The Code Compliance Board currently has three vacancies. All three incumbents reapplied and no other applications were received. Nominations will be made by Mayor Lavagnino and Councilmembers Cordero and Orach. Applications were received from the three incumbents only.

Justin Randall was nominated by Mayor Lavagnino.
Nancy Stewart was nominated by Councilmember Cordero.
Larry Tanner was nominated by Councilmember Orach.

On motion by Councilmember Orach, seconded by Councilmember Patino, and carried unanimously, the appointments were confirmed.

Landmark Committee
There is currently one vacancy on the Landmark Committee. The incumbent did not reapply, and no applications were received. Staff will readvertise this vacancy.

Planning Commission
The Planning Commission currently has two vacancies. Commissioners Andrade and Quandt did not reapply. Applications were received from Fred Quigley and Etta Waterfield. Nominations will be made by Councilmembers Boysen and Patino.

Fred Quigley was nominated by Councilmember Boysen.
Etta Waterfield was nominated by Councilmember Patino.

On motion by Councilmember Boysen, seconded by Councilmember Patino, and carried unanimously, the appointments were confirmed.

Recreation and Parks Commission
There are two vacancies on the Recreation and Parks Commission. Applications were received from Henry Grennan and Terri Zuniga, the two incumbents, as well as from Peggy Blough and Rebecca Carey. Nominations will be made by Councilmembers Boysen and Patino.

Peggy Blough was nominated by Councilmember Boysen.
Henry Grennan was nominated by Councilmember Patino.

On motion by Councilmember Patino, seconded by Councilmember Boysen, and carried unanimously, the appointments were confirmed.

Santa Maria Community Television Board of Directors
One appointment is necessary for the Santa Maria Community Television Board of Directors. Incumbent Mark van de Kamp reapplied. Applications were also received from Linnie Kam and Jeanne Sparks.

Mayor Lavagnino nominated Mark van de Kamp.

On motion by Mayor Lavagnino, seconded by Councilmember Cordero, and carried unanimously, the appointment was confirmed.

Mayor Lavagnino directed staff to readvertise the remaining vacancies.

CONSIDERATION OF A RECOMMENDATION THAT THE CITY COUNCIL MAKE APPOINTMENTS TO VARIOUS BOARDS, COMMISSIONS AND COMMITTEES WHICH REQUIRE CITY COUNCIL REPRESENTATION.
City Manager Ness gave the staff report. Staff has conferred with Mayor Lavagnino regarding Councilmember assignments to the various boards, commissions, and committees. Mayor Lavagnino requests that the following appointments be made:

Agency	Appointee/Alternate
SBC Association of Governments	Lavagnino/Patino
Air Pollution Control District	Lavagnino/Patino
Central Coast Water Authority	Lavagnino/Sweet
Multi-jurisdictional Solid Waste Task Force	Cordero/Boysen
Investment Oversight Committee	Boysen
Bringing Our Community Home	Cordero
Community Action Commission	Cordero
Schools Quarterly Roundtable Committee	Lavagnino/Patino
Airport/Council Informational Committee	Lavagnino/Orach
Breeze Police Action Committee	Orach

On motion by Mayor Lavagnino, seconded by Councilmember Orach, and carried unanimously, all appointments were confirmed.

Joan Leon, representing the Santa Maria Community Coalition, stated it was important to have Councilmembers serve on these regional boards and committees. However, the public never heard what was happening on these committees. She requested the Council include in their Oral Reports what action was taken at these meetings and any impacts to the City.

LANDSCAPE MAINTENANCE SERVICES AGREEMENT.
Director of Recreation and Parks Posada gave the staff report. The City Council is asked to consider awarding an agreement for Request for Proposal (RFP) 11-04 to J.D. Humann Landscaping, Inc. After three years of outstanding service by the current contractor, J. D. Humann Landscaping, Inc., staff determined that, given the economic climate and the competitiveness of the marketplace, it would be in the best interest of the City to seek out new service proposals. The City issued a Request for Proposals (RFP) because the RFP process allows the contractors the flexibility of presenting their company's best cost and best practices to deliver the services being requested by the City. Under the RFP process, several factors are considered, weighted and evaluated, and it is not necessarily the "low bidder" that is awarded the contract. The City received seven responses to the RFP. The responses were ranked based on overall costs of the contract, knowledge and experience in the profession, staffing levels to perform the scope of services and compliance with bid instructions. Of the seven, the best three were considered: Allweather Landscape Maintenance, Inc., Miranda Landscaping, Inc., and J. D. Humann Landscaping, Inc. Although J. D. Humann Landscaping, Inc., scored second highest in overall ratings, Humann's proposed labor hours were substantially higher than the other two proposals considered. Once the recommendation to award the contract to J. D. Humann was made, Mr. Phil Ball of Allweather Landscape Maintenance, Inc., filed a timely protest with the Department of Administrative Services

indicating that the evaluation of information he submitted was not properly considered by staff. During this protest process, the Department of Recreation and Parks also heard concerns from Miranda Landscaping. Pursuant to the City's Procurement Protest Procedures, a three-member review committee was appointed by the Director of Administrative Services. The review committee reviewed the RFP responses from both Allweather and Humann and determined that the Allweather RFP response did not provide adequate documentation of staffing levels for the Landscape Maintenance Districts. The review committee denied the protest. Therefore, staff's recommendation to award the bid to Humann remains unchanged.

Councilmember Boysen disclosed that he met with Mr. Miranda and felt that his concerns would be addressed in future RFP's.

Councilmember Cordero also disclosed that he met with Mr. Miranda.

Resolution No. 2011-08 awarding the bid and approving a professional services agreement with J. D. Humann was adopted on motion by Councilmember Boysen, seconded by Councilmember Orach, and carried on the following vote:

AYES: Councilmembers Boysen, Cordero, Orach, Patino, and Mayor Lavagnino
NOES: None
ABSENT: None
ABSTAIN: None

Resolution No. 2011-08 adopted. A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA MARIA, CALIFORNIA, APPROVING A PROFESSIONAL SERVICES AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES.

FINDING OF PUBLIC CONVENIENCE OR NECESSITY IN THE MATTER OF THE ISSUANCE OF A TYPE 20 (OFF-SALE BEER AND WINE) ALCOHOLIC BEVERAGE LICENSE FOR CARNICERIA EL AMIGO ABAD, 717 E. MAIN STREET, SP-2010-029. Director of Community Development Appel gave the staff report. The City Council is requested to adopt a motion specifically declining to make a finding of public convenience or necessity. This item was continued from the December 7, 2010, City Council meeting at the applicant's request. This property is located on the north side of East Main Street, between Elizabeth Street and College Drive, in a strip shopping center. The applicant proposes to add a small display of beer and wine for sale to its existing product mix in a neighborhood market that contains 4,000 square feet of floor area. The City Council previously considered a similar request from the same applicant in December 2007. The City Council, at that time, affirmed a protest to the issuance of the alcoholic beverage license filed by the Police Department and declined to make a finding of public convenience or necessity.

Staff is recommending denial of this request for several reasons. The property is located in a crime reporting district that has an undue concentration of crime. This location is in Crime Reporting District 35 where the number of crimes reported in 2010 was 98, in excess of the City-wide average plus 20 percent specified in Section 23958 of the Business and Professional Code. Additionally, this business is located in an area with an undue concentration of alcoholic beverage control licenses. According to the Alcoholic Beverage Control Board, four licenses are authorized in this census tract, and there are six existing licenses. Four of the six licenses are within approximately 600 feet of this property. They are Santa Maria Liquor, Vons, Dino's Liquor and Deli, and CVS Pharmacy. The Police Department recommends against making a finding of public convenience and necessity, and the applicant has not demonstrated public convenience or necessity.

Mayor Lavagnino disclosed that he visited the store and talked to the applicant. He said the Council would be doing a great disservice to a small business if the license was not supported.

Councilmember Boysen disclosed he also visited the store and met with the owners. He felt it was a matter of public convenience and would allow Mr. Barrera to stay competitive. He requested a condition be added that there be no liquor advertisement on the outside windows.

Councilmember Cordero disclosed that he also visited the store. It was truly a grocery store. There was a very limited area for liquor sales, and he would be supporting it.

Councilmember Patino stated she felt there was an over concentration of liquor sales in the City of Santa Maria. She could not support it.

Councilmember Orach disclosed he visited the store. He felt they were trustworthy people and would comply with whatever was asked of them. It was not a significant amount of sales and would give the owners a competitive edge.

Director Appel referred to Attachment 6, page 3, Condition 1, and requested it be 25 percent rather than 33 percent to comply with the zoning ordinance. If Council agreed, a new condition could be added that no window advertising of alcoholic beverages be permitted.

On motion by Councilmember Cordero, seconded by Councilmember Boysen, and carried on the following vote:

AYES: Councilmembers Boysen, Cordero, Orach, and Mayor Lavagnino
NOES: Councilmember Patino
ABSENT: None
ABSTAIN: None

The Council made a finding of public convenience and necessity in the matter of the Alcoholic Beverage License for Carniceria El Amigo Abad at 717 E. Main Street with the above-referenced changes to the Police Department conditions.

CITY MANAGER'S REPORT
City Manager Ness reported on items anticipated for the February 1, 2011, City Council meeting including the Call for Bids for Fire Station #5 and a grant award from the Aware and Prepare program.

ORAL REPORTS BY COUNCILMEMBERS
Councilmember Cordero reported he attended the Boys and Girls Club fundraising kickoff dinner, a Community Action Commission meeting, a United Way meeting, Ken George's daughter's wedding, a Bring Our Community Home meeting which would be doing a homeless count, a Restorative Justice meeting, the retirement dinner for 10 Police employees, the Martin Luther King celebration, and a meeting at Good Samaritan Shelter.

Councilmember Orach reported that the All-America City Committee's outreach would begin on January 29th and the last LAFCO meeting was cancelled.

Mayor Lavagnino reported he attended the Mayor's luncheon, Harrell Fletcher's funeral service, met with representatives from the Cabrillo Economic Development Corporation, met with Kathy Simas from the Santa Barbara Foundation, met with representatives from Heritage Oaks Bank, and attended the Mayors and Managers meeting.

Councilmember Patino reported she attended Harrell Fletcher's funeral service. She said the POA item was very difficult for the Council because it was like they were negotiating with the POA. The City did not have the money and had to be fair to all employees. The bottom line was that the City could not sustain this any longer. To do anything other than what the Council did, would put the whole City in jeopardy.

Councilmember Boysen reported that the one key meeting he attended was the group putting together the homeless count and explained the importance of the count.

ADJOURNMENT
There being no further business to come before the City Council at this time, the meeting was declared adjourned at 9:25 p.m. by Mayor Lavagnino in honor of Rosemary Lynch also known as Sister Richard, Order of Saint Francis.

APPROVED

February 1, 2011
Date

Chief Deputy City Clerk and ex officio
Clerk of the City Council

ATTEST

Chief Deputy City Clerk

Mayor